

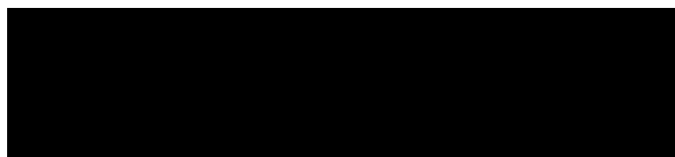
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC



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FILE:



Office: NEBRASKA SERVICE CENTER

Date: **SEP 23 2010**

IN RE:

Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a university. It seeks to employ the beneficiary permanently in the United States as a assistant professor pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, an ETA Form 9089 Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. Specifically, the director determined that the beneficiary did not possess a doctorate degree in social work.

On appeal, [REDACTED], Associate Director and University Legal Counsel submits a letter.¹ The petitioner also resubmits a letter from [REDACTED] Dean of the School of Social Work, University of [REDACTED] dated October 10, 2007, the advertisement from the [REDACTED] [REDACTED], November 5, 2004, for the proffered position, and two letters of recommendation. On appeal, the petitioner's job posting for the proffered position with an application deadline of January 1, 2005 is also submitted.

The [REDACTED] advertisement states that the position in the social work faculty required a Ph.D. (or ABD) or its equivalent in social work or a related field. The Department of Social Work's job posting states that a doctorate is required or its equivalent in social work or a related field. Both the advertisement and the job posting state that a master of social work degree is also preferred, and that candidates must demonstrate competence in addressing diversity issues. The Department of Social Work's job posting describes the school's areas of concentration as gerontology, family and child welfare; and physical and behavioral health (including addiction, mental health, violence; and prevention.)

The record shows that the appeal is properly filed and timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the

¹ Although Mr. [REDACTED] letter is on the University of [REDACTED] Office of Legal Affairs letterhead, the record of proceeding does not contain a Form G-28 (Notice of Appearance) signed by the petitioner identifying Mr. [REDACTED] as the petitioner's designated agent/representative. Thus the AAO views the petitioner as self-represented.

equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.²

The specific issue on appeal is whether or not the beneficiary's Ph.D. in gerontology qualifies her for the proffered position of post secondary assistant professor conducting teaching and research at a university.

The beneficiary possesses a U.S. master's of arts in gerontology and a doctorate degree of philosophy with a major in gerontology from the University of [REDACTED]. The latter degree was received on May 23, 2004, prior to the 2006 priority date. Thus, the beneficiary has the level of education required by the employment-based advanced degree visa classification. However, we must also consider whether the beneficiary meets the job requirements of the proffered job as set forth on the labor certification.

Qualifications for the Job Offered

Relying in part on *Madany*, 696 F.2d at 1008, the U.S. Federal Court of Appeals for the Ninth Circuit (Ninth Circuit) stated:

[I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from DOL that stated the following:

The labor certification made by the Secretary of Labor ... pursuant to section 212(a)[(5)] of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United

² The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating: “The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.” *Tongatapu*, 736 F. 2d at 1309.

The key to determining the job qualifications is found on ETA Form 9089 Part H. This section of the application for alien labor certification, “Job Opportunity Information,” describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole.

Moreover, when determining whether a beneficiary is eligible for a preference immigrant visa, United States Citizenship and Immigration Service (USCIS) may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. USCIS must examine “the language of the labor certification job requirements” in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS’s interpretation of the job’s requirements, as stated on the labor certification must involve reading and applying *the plain language* of the alien employment certification application form. *See id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer’s intentions through some sort of reverse engineering of the labor certification.

In this matter, Part H, line 4, of the labor certification reflects that a doctorate degree in social work is the minimum level of education required. Lines 7 and 7-A reflect that no alternate field of study is acceptable. The AAO notes that the job description of the proffered position includes the ability to teach undergraduate and graduate courses in the area of gerontology, family and child welfare and physical behavioral health, and to conduct research, serve on faculty committees, and provide student advising.

The beneficiary does have a United States doctorate degree and thus does qualify for preference visa classification under section 203(b)(2) of the Act. However, the question remains as to whether the beneficiary meets the job requirements on the labor certification based on her doctorate degree in gerontology. She does not possess a doctorate degree in social work, as stipulated by the ETA Form 9089. ³

³ Based on her combined University of [REDACTED] transcript submitted to the record, the beneficiary completed courses in communications, health and social behavior, psychology, and social work, and another area identified as HP and M, among other areas. Her combined transcript indicates specific coursework in social work, identified as social work and aging, and in sociology, identified as “soc aging & life crs.”

Dr. [REDACTED]'s letter submitted in response to the director's RFE described the relevance of the beneficiary's academic credentials to the field of social work. Dr. [REDACTED] states that the beneficiary's doctorate in gerontology is well within the defined research, teaching and service commitments of the social work profession and within the minimum requirements advertised for the position. Dr. [REDACTED] notes that the social work faculty at the University of [REDACTED] ([REDACTED]) in 2004 approved a new curriculum reorganizing the department along three substantive areas: child welfare, social and behavioral health, and applied gerontology. Dr. [REDACTED] states that given the interests of the Department of Social Work faculty to specialize in the applied gerontology area, the hiring of the beneficiary was consistent with the Department's plan, and both the position vacancy announcement and print advertisement specified that the Department of Social Work was looking for a candidate with a degree in social work or a related field.

Dr. [REDACTED] also notes that the [REDACTED] does not offer a degree in gerontology, but that a student who studied gerontology would receive a degree in social work, and for professional or academic purposes, would note a specialization or emphasis in gerontology. Dr. [REDACTED] notes that in contrast, the beneficiary's doctoral institution offered a doctorate degree in gerontology. Dr. [REDACTED] states that given the variance in the names of degrees from institution to institution, he, along with the [REDACTED] Search and Screen Committee, recognizes the beneficiary's degree to be within the field of social work and clearly within the "social work or related field" requirement. Dr. [REDACTED] notes that the beneficiary's reference letters also recognized the suitability of the beneficiary's degree for a faculty position in a Department of Social Work, and none expressed concern that her doctoral degree was obtained in the specialization rather than in the more general field of social work.

Dr. [REDACTED] also notes that the social work field nationally has recognized gerontology as one of the major growth areas into the next century for social workers. Dr. [REDACTED] notes that major foundations as well as national and federal agencies such as the Department of Veterans Affairs, Centers for Medicare and Medicaid, The National Institute on Aging, AARP, and The Atlantic Philanthropies all have active agendas that foster a greater connection between social work and gerontology. [REDACTED] also notes that the beneficiary has received financial support from a major foundation to promote gerontology research and its application to the social work profession.

With regard to the letters of reference submitted to the record, [REDACTED], PhD, Associate Vice Provost for Research, Professor of Communications Studies, Graduate Faculty, Gerontology, The University of [REDACTED], describes the beneficiary's master and PhD research on the relationship between the communication problems associated with Alzheimer's dementia and the burden experienced by family caregivers. Dr. [REDACTED] also states that the manuscript from both her master's thesis and doctoral dissertation is either in press or under review at the Journal for Gerontology: Social Sciences.

The AAO notes that the beneficiary's curriculum vitae identifies her master's thesis as "Investigating the Effects of Communication Problems on Caregiver Burden" and her doctoral dissertation as "Identity Maintenance Processes of Spouse Caregivers: Implications for Caregiver

Burden.” Based on her combined University of [REDACTED] transcript submitted to the record, the beneficiary completed courses in communications, health and social behavior, psychology, and social work, and another area identified as HP and M, among other areas. Her combined transcript indicates specific coursework in social work, identified as social work and aging, and in sociology, identified as “soc aging & life crs.” Other coursework focuses more on methodology and statistical research methods and dissertation work. Thus the beneficiary’s doctorate degree in gerontology and research contain coursework in social work and sociology. Her curriculum vitae further reflects that the beneficiary is a member of both the Gerontological Society of America and the Society for Social Work and Research.

Part A of the ETA 750 indicates that the DOL assigned the occupational code of 25-1113.00 and title, Social Work Teacher, Post Secondary, to the proffered position. DOL’s occupational codes are assigned based on normalized occupational standards. According to DOL’s public online database at <http://online.onetcenter.org/crosswalk/> (accessed on June 24, 2010) under social work Teacher, Post secondary, DOL’s updated correlative occupation) and its description of the position and requirements for the position most analogous to the petitioner’s proffered position, the position falls within Job Zone Five generally requiring graduate school for the occupation type closest to the proffered position.

DOL reports the following job titles falling under this standardized occupational classification: social work professor, clinical professor, instructor, lecturer, bachelor of social work program coordinator, faculty member, field education coordinator, social work lecturer. See <http://online.onetcenter.org/link/summary/25-1113.00> (accessed August 11, 2010). Those occupations include the proffered position as do the list of tasks typical to this occupational field.

The OOH has the following generic information about the required education for post secondary professors, including those involved in social work, and draws a clear nexus to the specific type of work employees perform:

College and university faculty make up the majority of postsecondary teachers. Faculty usually are organized into departments or divisions based on academic subject or field. They typically teach several related courses in their subject—algebra, calculus, and statistics, for example. They may instruct undergraduate or graduate students or both. College and university faculty may give lectures to several hundred students in large halls, lead small seminars, or supervise students in laboratories. They prepare lectures, exercises, and laboratory experiments; grade exams and papers; and advise and work with students individually. In universities, they also supervise graduate students’ teaching and research. College faculty work with an increasingly varied student population made up of growing shares of part-time, older, and culturally and racially diverse students.

Faculty keep up with developments in their field by reading current literature, talking with colleagues, and participating in professional conferences. They also are encouraged to do their own research to expand knowledge in their field by performing experiments,

collecting and analyzing data, or examining original documents, literature, and other source material. They publish their findings in scholarly journals, books, and electronic media.

Most postsecondary teachers use computer technology extensively, including the Internet, e-mail, and software programs. They may use computers in the classroom as teaching aids and may post course content, class notes, class schedules, and other information on the Internet. The use of e-mail, instant messages, and other computer utilities has improved communications greatly between students and teachers.

Most full-time faculty members serve on academic or administrative committees that deal with the policies of their institution, departmental matters, academic issues, curricula, budgets, purchases of equipment, and hiring. Some work with student and community organizations. Department chairpersons are faculty members who usually teach some courses but have heavier administrative responsibilities.

(Emphasis added).

With regard to the instant matter, the O*NET and OOH both demonstrate that the education required for the proffered position, social work professor, post secondary, always involves graduate degrees. The proffered position's duties include many of the generic duties outlined above, including teaching gerontology at a postsecondary level, in addition to conducting research, serving on faculty committees, and advising students.⁴ With regard to the link between social work studies and gerontology, the DOL's *Occupational Outlook Handbook* (OOH) indicates that the three main types of social work are child, family and school workers, with other social workers helping elderly people and their families.⁵ The OOH also notes that the growing elderly population and the aging baby boom generation will create greater demand for health and social services, resulting in rapid job growth among gerontological social workers.⁶ The OOH when examining the occupation of gerontologist, refers to sociologists who might do research in one or more specialties including gerontology, but indicates such individuals work as public policy analysts for government or private would either work in government or private organizations.⁷ Thus the OOH indicates that the field of applied gerontology, while studied in other academic fields, is closely associated with the field of social work.

Dr. [REDACTED] in his letter notes that the University of [REDACTED] does not offer a degree in gerontology, and that student who studies gerontology would receive a degree in social work, but

⁴ In line with Dr. [REDACTED]'s description of the current restructuring of the department's curriculum focus, the undergraduate and graduate teaching of family and child welfare and physical and behavioral health are also identified in the job duties described on the ETA 9089.

⁵ See also <http://www.bls.gov/k12/help.htm> (accessed August 7, 2010.)

⁶ The OOH, located at <http://www.bls.gov/OCO>, is a nationally recognized source of career information published by the DOL's Bureau of Labor Statistics.

⁷ See <http://www.bls.gov/oco/ocos314.htm> (accessible as of September 1, 2010.)

for professional or academic purposes, would likely note a specialization or emphasis in gerontology. Dr. [REDACTED]'s comments clearly establish that the proffered position of social work professor, post secondary, within the petitioner's academic emphasis, has a clear nexus to the beneficiary's educational background in gerontology.

The beneficiary's education correlates to the education required by the position. Thus, the beneficiary does possess a degree in the correct field for the position as her doctoral degree in gerontology has prepared her to perform the required job duties of social work professor for the petitioner's new social work curriculum with emphasis on gerontology. The field of gerontology is within the coursework for an undergraduate or graduate degree in social work. DOL's standardized occupational standards support the premise set forth by the petitioner that social work is a broad field, encompassing numerous specialty degrees, such as the beneficiary's credentials. The beneficiary's specialized graduate work and Ph.D. thesis involving social work, aging and communication with caregivers render her aptly qualified for the proffered position.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. The petition is sustained.

ORDER: The appeal is sustained.